CUT MOTION No. 66

Separation of judiciary and Executive

Mr. V. J. Mathai *(Planters):* Sir, the object of my motion is *to discuss the question of the separation of the judiciary from the executive.* Sir, I will not go into an academical discussion of this question which has always been discussed in every country till the desired object was obtained. I will only say without going into controversy and treading on controversial grounds that it is in the interests of the public that the executive and the judiciary should remain separate. By "remaining separate" I mean that appointments to the judiciary except the highest should always be made by the judiciary. That is the point. In fact everything else follows. To say anything further is beyond the scope of this House of parliament. We should not go into that, nor do I for a moment entertain the thought that the executive are interfering with the courts of justice. As far as the Cochin State is concerded, there has never been a whisper that the Government has been interfering with the courts of Justice. My object is to see that the power of appointing and promoting the members of the judiciary, except that of the High Court, are vested in the High Court itself. Otherwise the result will be that though the High Court will remain uncorrupt and incorruptiable as it always had been to the glory of our State, so far as the lower rungs in the ladder are concerned, if they owe their office to the executive; necessarily they will owe their allegiance to the executive. (A voice—for promotions).

Remember we are on sacred grounds and when you tread on sacred grounds be careful that you keep up the sanctity of that place. We are now on the question of the judiciary the reputation of which we hold high above all controversies except when it is absolutely necessary. Therefore, Sir, if I may make it a little more clear the position is that if one individual wants to get a place in the judiciary and if he owes it to the favour of the Government, he may rather owe his allegience to the Government as a part from the judiciary and further as the Hon'ble Member for Chittur has put it that in the matter of promotions also those members of the judiciary who want promotions may, in cases in which the Government are interested, be influenced by the wishes of the Government though not expressed. Such cases are not rare. But I won't go beyond that. In the neighbouring State of Travancore I think the appointments are being made by the High Court.

Mr. M. Sivarama Menon *(Advocate-General):* The practice in Travancore is that on the rocommendation of the High Court Judges, the appointments are being made. Here also the views of the High Court are obtained.

Mr. V. J. Mathai *(Planters):* If that is the practice I would insist upon following that practice and act upon the recommendation of the High Court Judges always. That will be enough. Receive recommendations from the High Court not only in the case of judicial officers but also in the case of the appointment of Government Pleaders and the Advocate-General. That is perhaps beyond the purview of my motion.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, of course it is a well-known fact that the judiciary is entirely separate from the executive in this State and the motion is now sought to be confined to the appointments that are made to the judiciary. I may at once state that in our neighbouring provinces the practice that obtains at present is that these judicial officers are appointed by the respective Governments and with regard to certain classes of judicial officers the High Court has got the power of recommendation and the Government is to consult the High Court whenever recruitments are to be made. In Madras and Travancore also this is the practice and in Cochin State also whenever new recruitments are made unless for exceptional reasons where there may be no time, it is the practice here also to consult the Judges of the High Court.

Mr. Joseph Pettah *(Adur):* Is it also the same practice in the matter of promotions also?

Mr. M. Sivarama Menon *(Advocate-General):* In the case of promotions there used to be no consultation.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* That is in the matter of promotions the High Court is not consulted.

Mr. M. Sivarama Menon *(Advocate-General):* Now the purpose of the motion is quite clear to Government. At any rate if this House thinks that any change in the existing practice is necessary, it will be considered by Government. To carry on the discussion any further will look rather awkward and lead people to believe that there is something wrong.

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Mr. V. K. Bhaskara Menon *(Cranganur):* That is the reason.

Mr. M. Sivarama Menon *(Advocate-General):* If it is on account of that apprehension and with a view to safe-guard the future I have only to say that Government can really be found fault with only if there is a failure of justice on account of the continuance of the practice which they are now following. In the opinion of the Government no case has been made out that the present practice has led to a failure of justice.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* We are stronger.

Mr. M. Sivarama Menon *(Advocate-General):* Government had no occasion to find that the power of appointment in the hands of the Government had led to any miscarriage of justice. If without any such material, this motion is pressed, Government have no other alternative than to oppose it.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* One point is specifically raised. What is the position of the Government with regard to that, namely whether the judiciary and the executive are separate already or are they clubbed together.

Mr. M. Sivarama Menon *(Advocate-General):* With regard to judicial matters it is independent.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* My question has not been fully answered.

Mr. M. Sivarama Menon *(Advocate-General):* So far as the judicial functions are concerned it is independent. The Government has only got the administrative Control. The same officer does not exercise judicial and executive functions.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Is it separate or is it not separate.

Mr. M. Sivarama Menon *(Advocate-General):* Judicial functions are separate.

Mr. C. V. Iyyu *(Kunnamkulam):* Sir, I oppose the motion.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, on a point of order. The law Member has replied and the mover alone has the right of reply.

Deputy President : The Law Member only gave an explanation. As soon as the Mover finished his speech the Law Member rose up and gave an explanation. He has not finished his speech. It is only an explanation he gave.

Mr. C. V. Iyyu *(Kunnamkulam):* Sir, I oppose the motion. It seems both the mover and the law member do not know the conditions after 1935. The Hon'ble Member sitting in front of me who is practising in Palghat just now informed me that the Public Services Commission in Madras are selecting candidates as Munsiffs and Gov-ernment Pleaders. That is what is being done there. Formerly, that is some eight years back this was the practice. The mover of the motion wants to bring that old thing here. The Province of Madras has far advanced in the matter of these selections. Therefore I oppose the motion.

Mr. V. K. Bhaskara Menon *(Cranganur):* Before 1935 they had diarchy there. It is only after 1935 they got responsible Government. We are now still in the days of diarchy.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, the motion as stated here according to me contains a statement of fact which is not true because in various publications of the Government of Cochin they have stated that the judiciary and the executive have already been separated. Therefore the wording of the cut motion as it stands cannot be accepted by the Government because of their own commitments. We have been understanding the Government publications to be statement of true facts. We also will not be justified in supporting this motion now unless the Government makes an admission that it has not been so separated.

Rama Varmha Tampuran *(Secretary to Government):* What is the motion. The same officer does not exercise both judicial and executive functions.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Sir, now in the light of the very valuable suggestion of the Hon'ble Secretary to Government, we have to review our position. What has been stressed upon by the mover is, whatever be the wording of the motion, that the wholesome practice, whether it be in the judicial officers of our State being appointed, or even promoted of course the final sanction of the Government is necessary—in the choice of the persons to man our judiciary—consulting the highest judiciary be followed. That seems to be the point stressed and in that proposition no one who has got the interest of the people of the State, *i.e.*, no one who has got the desire to have proper, speedy and impartial justice meted out between subject and subject not one can oppose. Therefore, Sir, with due respect to what has been going on and in consideration of the realities that we see as a result of what has been going on let it be the policy of the Government and let the Government of Cochin come up to its greater height and be pleased to accept them in the wording of the cut and the spirit behind the cut and try to help and create an atmosphere that is necessary to be produced amongst the public that with our

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judiciary we have no manner of fears we can have impartial justice meted out to us without the least possible delay because they are persons who have been selected simply on the ground of judicial reasons and that by the highest judiciary in the State and not by the Government. Let no other consideration weigh with the Government. Try to inculcate a feeling in the mind of the public that they are getting pure unalloyed justice. That is the spirit of the cut.

Mr. A. V. Moothedan *(Chalakkudi):* Sir, I beg to oppose this motion. Now the proposal is to separate the judiciary from the executive. This is already existing and I think the judiciary is separate. I think the practice that is now followed is quite right. In the course of the speech the Hon'ble Member for planters suggested that the appointment of the subordinate judicial officers may be made by the High Court. It is not a sound proposal. If it were a sound proposal I would have accepted it. It is fundamental right from very ancient times that the sovereign had the power to administer laws and make laws. When State advanced and civilization advances, when law became multiplied and litigation also increased the sovereign was not able to carry on these functions. Therefore that function has been delegated to the judiciary. My friend wants appointment power to be given to the judiciary. I think that is a purely administrative matter. There will be difficulties also. Suppose the High Court is given the power of appointment. Can you make any representation to the High Court regarding the appointment. The High Court is a body which should be above board, above suspicion, should be away from communal bickerings. The High Court should be a separate body in itself. Nobody should approach the High Court Judges. They are there to administer justice. Viewed from that point also it is very unwise to give that power to the High Court. My friend was referring to the appointment of Government Pleaders. What is the advantage of the Government appointing Government Pleaders.

Mr. V. K. Bhaskara Menon *(Cranganur):* Because they know the capacity of the individuals.

Mr. A. V. Moothedan *(Chalakkudi):* How can the High Court know the capacity of an individual practising in Vadakkancheri.

Mr. V. K. Bhaskara Menon *(Cranganur):* How can the Secretary to Government know that.

Mr. A. V. Moothedan *(Chalakkudi):* He has got numerous subordinates under him. He can get information very easily. Therefore, Sir, it is very unwise to give this power of appointment of subordinate officers to the High Court. That will seriously affect their normal duties of administering justice.

Mr. K. T. Achyuthan *(Ezhuvas-Talappalli):* I also rise to oppose this motion. As was expressed by the Hon'ble Member for Chalakkudi there is a principle accepted by Government that judicial officers are cent per cent independent even though they are appointed by Government. Then where is the fear for us that there will be other considerations when they administer justice. We ourselves conclude before hand that these considerations may prevail. Secondly as was stated by the Hon'ble Member for Chalakkudi the High Court can check them when they go astray. Suppose they go astray, even the High Court has got power to recommend to the Government that such and such an officer should be punished. The High Court can at the same time interfere with any acts of injustice done by a subordinate judicial officer. In the matter of appointments Government have to consider very many factors. There are different communities here. I think the proposition is very clear and I strongly oppose the motion.

Mr. M. Sivarama Menon *(Advocate-General):* Sir, I have only to add one or two facts more to the points raised against the acceptance of this motion. It is against public policy to invest the power of appointment of judicial officers to the High Court. The Government of Cochin Act has protected Judges from being criticised and they are judicially independent. Now if this power is given to them the public will be criticising them. Practically this will be helping the public to ridicule them. In a State like ours where there is communal rivalry prevalent, I think it is highly necessary that this power should vest in the Government entirely. Government do not expect any person who has been appointed as a Magistrate or a Munisff to cater to the needs of any Government servant or Government. An independent judiciary is in fact the main arm of the Government. The existence of an independent and efficient judiciary is really a protection to the Government and Government have expected for all time and will expect for ever that the highest standard of independence should be maintained by the judicial officers and if Government have occasion to think that as a matter of fact any judicial offcer has a mind to cater to the needs of Government, they can feel that and say that he is quite unfit to occupy that place. Do you mean to say that the Government is not interested in maintaining an independent judiciary.

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Now all the laws that are passed by this House are practically administered by the Courts. The Government have to bow to their decisions and it is not at all proper to think for a moment that the Government by trying to retain this power in their hands wishes to have a sort of slavery infused in the minds of those incumbents and thereby inculcate in them a spirit that they shoud not go against the interests of the Government. The Government expects every judicial officer to be above suspicion and quite independent and it is for that purpose that they are appointed. They are appointed there for doing nothing wrong but only for doing the right thing. Since the Government think that judicial officers have been acting only in that correct fashion and regard being had to all the circumstances, it is considered that it is not a proper time that any change of policy is introduced in this respect.

Mr. V. K. Bhsakara Menon *(Cranganur):* The Hon'ble Law member was just now saying that the Government expects the judicial officers to act boldy and fearlessly. I think the public expects them to do sensibly too.

Mr. M. Sivarama Menon *(Advocate-General):* If we have a Judge who goes wrong and acts insensibly I think there are other courses open to rectify the mistakes. If this power of appointment is given to the High Court, where is the guarantee that the Judges will be beyond criticism in this House and in the Press. The fundamental argument is we must always keep the Judges of the High Court in the highest public esteem.

Mr. P. Kumaran Ezhuthassan *(Vadakkancheri):* Do you mean to say that the judgments of the High Court could not be criticised?

Mr. M. Sivarama Menon *(Advocate-General):* You can with regard to questions of law.

Mr. A. V. Moothedan *(Chalakkudi):* Cannot this House in a fair manner discuss the judgment of the High Court.

Mr. M. Sivarama Menon *(Advocate-General):* After the judgment is pronounced upon a question of law the lawyers may come to different opinions. You can enter into a discussion as to whether this view or that view is more worthy of being accepted. They may also point out that the better view is the one accepted or rejected in the Judgment.

The Government do not say that time may not come when this motion may be adopted. Regard being had to the present conditions what the Goveanment say is, as a matter of fact there is no necessity to change the present practice.

Mr. V. J. Mathai *(Planters):* The Hon'ble Member for Law based his opposition to my proposition on the ground that if power of appointment invested in the High Court their actions may be criticised and there fore the prestige and dignity of the High Court will be affected. I do not agree with him, on the question that the acts of the judiciary should not be criticised. The Hon'ble Advocate-General himself admits that the public and the press of our land and the legislature can criticise the decisions of the judiciary. The Hon'ble Advocate-General thinks that criticism will bring them into ridicule in the case of wrong appointments. Two wrong arguments arise. First of all, he has presumed that the High Court may make wrong appointments. Why should he presume that? I assert that the High Court will never make wrong decisions in the matter of appointments. That is one thing Secondly, if in the matter of appointment the High Court may be criticised, if inefficient members, mark that, are appointed to the judiciary, and if they make wrong decisions, the criticism will be all the more greater than in the case of a wrong appointment. Therefore, my object is to see that the judiciary is held above all criticism whether on account of efficiency or otherwise. I may at once dispel the idea of the Hon'ble Advocate-General that I am not living in the land of Utopia nor am I going on the way towards it. I am attempting to bring our State on a level with that of England. If certain conditions exist in England, why not bring them into the land if you can follow England in all other respects. That is the idea which I have been placing before you. The Hon'ble Advocate-General spoke of practical politics. I ask this question, have not members of the judiciary been recruited from other departments of the State? Is it not a common occurrence for us to see that members of the Police Department are being grafted as High judicial officers in the State. Are there not several cut motions in the names of several members of this House on that question? Have not recruitments been made from the Police Department? Have not Police Commissioners been recruited as Judges of the High Court and *vice versa*? Have not Excise Commissioners been recruited to the High Court? Are not our ablest men in the judiciary taken out first from the High Court to the District Court, from the District Court to the Revenue Department, and from

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the Revenue Department to the Excise Department? Those are exigencies of service! Is there any honest man in this House who ever says that service in the Excise Department will increase the learning and erudition of any man in the judiciary? If an inefficient man is thrown over the head of an efficient man, will he not feel discontented? I ask you, to take first the 3 members in the Munsiffs' cadre, how long have they been in service, how many men have gone over their heads? Such a thing would not have occurred if the High Court was given the privilege and the right to exercise their discretion. I ask the Advocate-General whether this is the land of Utopia or practical politics. I ask those Hon'ble friends who opposed my motion on the ground of difficulty in the Cochin State for administering communal justice. I ask them, has any communal justice been kept in mind at all. There is an English game called "Snakes and Ladders". Appointments to the judiciary and careers in the judiciary are like that of playing at snakes and ladders. At one time you find a High Court Judge going down to the Excise Commissioner's place and at another you find a member of the Revenue Department going on to the High Court. Are these not practical politics to the Advocate-General? Even an officer who has been found to be most unsatisfactory say for example a Protector of the Depressed Classes, is find fit to be in the judiciary. Are these practical politics? Ultimately he was found inefficient in that department also. Are these practical politics, judicial officers being taken as recruiting officers? What wonderful erudition in law would you get by being a recruiting officer? And when these people come and administer justice between man and man and give wonderful judgments, what do the people say? Let them be above suspicion like Caesar's wife, and never put forth your argument that if the power of appointment is given to the High Court they will bring themselves to ridicule. Already, the judiciary are in ridicule. Remember that it is a sound principle that not only should justice be done but that it should appear that justice is done. If you promote a leader of the Bar to the judiciary, the feeling in the minds of the people will be that they will get justice, since he is a learned man. If you take an experienced man and appoint him as District Munsiff, the feeling comes "here is an experienced Munsiff". If a Police Commissioner is appointed as High Court Judge, then also there will be that feeling that he was only a Police Commissioner and therefore he ought not to have been brought there. Adopting that very same argument, I submit, Sir, that this motion has substance in it. My object was only to discuss the motion. Therefore I beg leave of the House to withdraw the motion.

Motion, by leave, withdrawn

CUT MOTION No. 67

Retired judicial officers practising in the courts

Mr. V. J. Mathai *(Planters)*: I rise to move *to reduce the allotment of Rs. 4,030 for Law and Justice-Establishment by Re. 1. The object is to prohibit the retired Judicial officers except the Advocate-General and Government Pleader from practising in the Courts of the State.* Sir, this question was discussed on the floor of this House, and I thought there was unanimity when it came here before. Now that this is practically a new House and since the Government have not taken any steps to prohibit this evil which according to me, is an evil, I would request the attention of this House to discuss this motion. Today, in our courts, retired Judges of the High Court and several retired judicial officers are practising as advocates. The chief evil is this. When the judges are on the Bench, they comment upon the actions of the judicial officers individually. If they have got the power of recommending anybody for appointment or promotion, then naturally those officers who were under them are obliged to the officers above them for their promotions or otherwise. Therefore, in other words, the inferior judicial officers will be under a debt of gratitude and under obligations to the officers above them in the matter of recommendation for promotion or even for appointment. This is a fact. If it were otherwise, there would have been greater strength in my argument. But that does not matter. The result is, human nature being what it is—and the Advocate-General himself says that in our land there are so many cries—when a Judge of the High Court goes and practises before Munsiff whom he has appointed and whose judgment he has sat in judgment upon, necessarily the Munsiff would rather feel shy. That feeling of inferiority complex, to borrow the words of one clever advocate, subconscious complex, will certainly remain there. Therefore, Sir, to make it clearer I elaborate this point. If a High Court Judge comes and practises before a Munsiff and gets a judgment in his favour, necessarily the other party will say that because a High Court Judge came, he got a judgment in his favour. President Taft, a renowned President of the United States of America, was an eminent lawyer before he became the President of the United States of America. His

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